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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1123rd MEETING

Held at Headquarters, New York,
on Tuesday, 24 March 1992, at 10 a.m.

Chairman: Mr. POCAR

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The meeting was called to order at 10.25 a.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Methods of work of the Committee under article 40 of the Covenant

1. Mr. AGUILAR, speaking as Chairman/Rapporteur of the Working Group on article 40, said that he wished to hear the opinions of Committee members regarding the nature and format of the concluding observations on reports of States parties. In his opinion, the first step should be to appoint rapporteurs for the reports that would be considered at the current session. At the end of the consideration of a report, the Committee members who participated in the discussions should, if possible, provide a written summary of their recommendations and concerns to the rapporteur. Once the rapporteur had all the relevant information, he would prepare a draft that would be circulated informally among the other Committee members for comments. The rapporteur would subsequently prepare a second draft that he would formally submit to the Committee.
2. Mr. SADI said that, at the end of the Committee's consideration of a report, the Chairman summarized the views of the Committee members. Perhaps that summary could be used as the basis for the concluding observations. In his opinion, it was not possible for one person to reflect all the views expressed in the Committee and, instead of designating one rapporteur, the Committee should appoint three people to prepare the concluding observations on each report of a State party. The three people involved would expand the Chairman's summary on the basis of the Committee's deliberations. Perhaps the persons responsible for preparing the observations could come from different regions.
3. Mr. FODOR said that he fully agreed with the proposal that the person designated to draft the concluding observations should be the person who had prepared the list of issues. However, the Committee should be flexible and, if the person who had drawn up the list of issues was unable to prepare the concluding observations, another person should be appointed. It was also important to designate the person responsible for drafting the concluding observations on a particular report well in advance in order to enable the Secretariat to provide documentation in the language preferred by the rapporteur.
4. The Working Group had proposed that the draft of the concluding observations should be prepared within 48 hours after the conclusion of the examination of a report. Whether or not that time-limit was sufficient would depend on how quickly the Secretariat was able to have the relevant documents translated. If 48 hours was not sufficient, perhaps the time-limit could be extended to 72 hours. Given its current programme of work, the Committee would not have sufficient time to draft concluding observations on the report of Yugoslavia, and he proposed that the Committee should begin consideration of that report on 6 April and conclude its consideration on 8 April.

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5. Mr. SADI, referring to Mr. Fodor's remarks concerning the report of Yugoslavia, suggested that the Committee should use the period between its sessions to prepare concluding observations on reports of States parties considered during the last days of a session.

6. Mr. EL-SHAFEI said that the Chairman's comprehensive summary of the observations of individual Committee members could be used in the drafting of the concluding observations. He did not see any difficulty in the procedure, since the Committee would have the Chairman's summary, and the same rapporteur who took part in the preparation of the list of issues would be involved in the drafting of the concluding observations. Everything would depend on the number of reports before the Committee. In scheduling its consideration of reports, the Committee should bear in mind the time required for drafting the concluding observations.

7. The CHAIRMAN said that, since the Chairman could not always be present during the Committee's consideration of a report, his summary might not include important information. It was therefore preferable to appoint a rapporteur who would be present at all meetings dealing with a particular country report.

8. With respect to format, the Committee must provide clear guidelines for the rapporteurs. Some members of the Committee had suggested that the Secretariat should participate in the preparation of the concluding observations, while others had suggested that the Secretariat should have either no role at all or, at best, a very limited one. If the Committee decided that the Secretariat should take part in the exercise, it must ascertain whether the Secretariat was capable of performing the tasks required of it.

9. Mr. AGUILAR, speaking as Chairman/Rapporteur of the Working Group on article 40, said that, while it was commendable to use the Chairman's summary as a model, the Chairman was not always present at all meetings. The rapporteur responsible for a particular report should attend all Committee meetings at which the report was discussed. The Committee would have to decide what method should be followed in the appointment of rapporteurs.

10. With respect to Mr. Sadi's suggestion that three people should be involved in preparing the concluding observations, the Working Group concluded that, for practical reasons, such a procedure was not possible. Perhaps a compromise could be reached, and one person could be designated to prepare the list of issues while one or two others could provide informal assistance. However, the Working Group considered that it would be best to appoint only one person.

11. Mr. PRADO VALLEJO said that it was difficult for the Chairman to summarize the views of all the members of the Committee, since each member had his own approach and his own particular interests. It was therefore preferable to appoint a rapporteur to prepare the concluding observations in consultation with the other Committee members. The rapporteur should be a

(Mr. Prado Vallejo)

national of the State submitting the report, since he would be most familiar with the situation in the country under consideration and would be better equipped to draft the Committee's observations. The format of the concluding observations should be flexible and should take account of the specific problems facing the State party. Perhaps the Secretariat could appoint a person to attend all Committee meetings devoted to the consideration of a particular report and to assist in compiling the views of Committee members.

12. The Committee should not be too rigid in its approach, since it was only experimenting with a new method of work. Before it took a final decision, the Committee would have to evaluate the results of the new method at its current session.

13. Mr. MAVROMMATIS said that, because of time constraints, there would always be concluding observations that would have to be prepared after the Committee completed its work for a particular session. Those observations would be much better prepared because the rapporteurs would not be bound to a 48-hour time-limit. The Committee should prepare as many concluding observations as was possible during a given session and leave the rest for its next session.

14. The Chairman's summary would always be subjective and was no substitute for an independently prepared report that would be endorsed by the Committee as a whole.

15. The concluding observations could not be prepared without the help of the Secretariat. The Committee should accept the current format for the concluding observations and be flexible in adopting such changes or additions as might prove necessary.

16. Mr. SADI suggested that the concluding observations might be patterned on the Committee's decisions on communications. The documents could include a summary of the submission by the State party, the issues raised by Committee members and the replies by the State party, and the concluding remarks of Committee members indicating areas where responses of the State party had been unsatisfactory. The rapporteur should consult closely with members in preparing the concluding observations, which should be as concise as possible.

17. Mr. EL-SHAFEI recalled that article 40, paragraph 4, of the Covenant governed the work of the Committee on the matter. It appeared that consensus on format was near, and only the method of preparation itself remained to be decided.

18. Mr. WENNERGREN reminded members that the new procedure would be followed on an experimental basis. For the time being, he favoured designation of a single rapporteur, who would consult with other members as needed. Support from the Secretariat would be required to ensure consistency in format. The Chairman's summary would be valuable to the rapporteur as a checklist of issues raised during consideration of reports from States parties.

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19. Mr. MÜLLERSON said that the most important points to be covered in the concluding observations were the Committee's concerns and recommendations, because they provided guidance to States parties on areas where change was needed.

20. Miss CHANET said that she favoured designation of a single rapporteur, who would make the commitment to be present at all meetings during which the relevant report was considered. The assistance of the Secretariat would be needed, but individual Committee members would be responsible for submitting specific observations they wished to have included.

21. Mr. MAVROMMATIS, supported by Mr. Herndl and Mr. Ando, suggested that an additional section, headed "Factors and difficulties affecting implementation", should be included in the concluding observations, following the section headed "Positive developments" in the sample document submitted by the Working Group.

22. Mr. ANDO said that recommendations must be specific, since their purpose under article 40 of the Covenant was to encourage ongoing dialogue with the State party. The concluding observations should reflect the Committee's evaluation of the report and the State party's replies to questions.

23. The CHAIRMAN said that, it appeared consensus had been reached that the sample format for concluding observations on reports of States parties proposed by the Working Group on article 40 should be adopted for use as from the current session, with the addition of a new section, headed "Factors and difficulties affecting implementation". Issues of particular concern to Committee members would be set out in detail, explaining the reasons for concern, and recommendations would be as specific as possible. A rapporteur would be selected in each case to prepare a text in consultation with Committee members and the Chairman, with assistance from the Secretariat, in finalizing the document for submission. The Committee would endeavour to follow the new procedure for all reports taken up at the current session, but it could, if necessary, defer issuing concluding observations on the final report considered at the session. He took it that the Committee agreed to proceed along the lines he had just suggested.

24. It was so decided.

Lists of issues to be taken up in connection with the consideration of reports submitted by the States parties in conformity with article 40 of the Covenant

Second periodic report of Peru (CCPR/C/51/Add.4)

Section I

25. Mr. PRADO VALLEJO said that clarification should also be requested in paragraph (h) on the powers granted to the armed forces and the police during a state of emergency. With regard to paragraph (j), information on efforts to promote public awareness of the provisions of the Covenant and the Optional Protocol in the indigenous community should be included as well.

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26. Mr. AGUILAR, Chairman/Rapporteur of the Working Group on article 40, said that he had no difficulty with the amendments proposed by Mr. Prado Vallejo, although if a reference to the armed forces was to be included in paragraph (h), it should be inserted after the reference to paragraph 32 of the report.

27. Section I, as amended, was adopted.

Section II

28. Section II was adopted.

Section III

29. Mr. AGUILAR, Chairman/Rapporteur of the Working Group on article 40, suggested that the second sentence in paragraph (a) should be amended to read: "Please describe the measures adopted to prevent intimidation of members of the judiciary".

30. Mr. PRADO VALLEJO proposed that a paragraph (d) should be added to the section, requesting information on whether special courts existed in Peru.

31. The CHAIRMAN asked whether Mr. Prado Vallejo was referring to special courts set up under a state of emergency; if so, that issue was covered by section I, paragraph (f).

32. Mr. WENNERGREN said that there could be other types of special courts not set up under a state of emergency, such as military courts.

33. The CHAIRMAN said that he supported Mr. Prado Vallejo's proposal.

34. Section III, as amended, was adopted.

Section IV

35. Section IV was adopted.

Section V

36. Mr. SADI said that there was a trend in some developing countries towards the use of genetic engineering or abortion to prevent the birth of female children. He wondered whether it would be appropriate for the Committee to begin raising that issue; in the case of Peru, for example, the Committee could ask whether the practice existed and, if so, what the State's attitude towards it was.

37. The CHAIRMAN said that the issue was a very sensitive one; it should preferably be dealt with on a personal basis by the members of the Committee, unless the Committee had specific information concerning such a practice in a particular country.

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38. Mr. WENNERGREN said that, as Peru was a Catholic country which, to his knowledge, prohibited abortion, it was perhaps not the best example of what Mr. Sadi had described.
39. The CHAIRMAN said that the matter should be left to Mr. Sadi's discretion.
40. Mr. MAVROMMATIS asked whether there was any reason why paragraph (d) did not refer to "law and practice", as paragraph (c) did.
41. Mr. AGUILAR, Chairman/Rapporteur of the Working Group on article 40, said that there was no reason why those words should not be added for consistency.
42. Section V, as amended, was adopted.

Section VI

43. Mr. PRADO VALLEJO said that the areas of Peru where indigenous communities were located, such as the Amazon and Andean regions, were also centres of the illegal drug trade. He proposed that a paragraph should be added to the section, requesting information on the conditions affecting indigenous peoples in such areas.
44. The CHAIRMAN asked whether the issue raised by Mr. Prado Vallejo would not be more appropriate under section II, pertaining to article 8 of the Covenant.
45. Mr. ANDO said that the amendment proposed by Mr. Prado Vallejo could perhaps be inserted in paragraph (b), after "article 27 of the Covenant".
46. It was so decided.
47. Section VI, as amended, was adopted.

Third periodic report of Colombia (CCPR/C/64/Add.3)

Sections I and II

48. Sections I and II were adopted.

Section III

49. Mr. AGUILAR, Chairman/Rapporteur of the Working Group on article 40, proposed that the second sentence in paragraph (a) should be amended to read: "Please describe the measures adopted to prevent intimidation of members of the judiciary".
50. Mr. PRADO VALLEJO said that, because of the problem of violence in Colombia, measures had been adopted to guarantee the anonymity of judges presiding over trials in drug cases. He wondered whether the Colombian delegation could be requested to explain how the system worked and what problems had been encountered.

51. Mr. AGUILAR, Chairman/Rapporteur of the Working Group on article 40, said that he supported Mr. Prado Vallejo's suggestion. It was important to include a question on that issue, as the performance of judges could not be monitored either by other members of the judiciary or by the public under conditions of anonymity. A new paragraph could be added, to read: "Please provide information on the designation and action of judges in cases where they exercise their functions in secret".

52. Mr. WENNERGREN said that "exercise their functions anonymously" would be preferable to "in secret", as the latter phrase implied the practices of a police State.

53. It was so decided.

54. Section III, as amended, was adopted.

Sections IV and V

55. Sections IV and V were adopted.

Section VI

56. Mr. ANDO proposed that in paragraph (c) the words "special or particular" should be inserted before the word "measures".

57. It was so decided.

58. Section VI, as amended, was adopted.

Second periodic report of Belgium (CCPR/C/57/Add.3)

Sections I and II

59. Sections I and II were adopted.

Section III

60. Miss CHANET said that article 9 should be included in the parentheses after the title of the section.

61. The CHAIRMAN said that the Secretariat had taken note of Miss Chanet's suggestion.

62. Section III, as amended, was adopted.

Sections IV, V, VI and VII

63. Sections IV, V, VI and VII were adopted.

Draft general comment regarding article 10 of the Covenant (continued)
(CCPR/C/42/CRP.3)

Paragraph 8

64. Miss CHANET said that, since paragraph 8 of the draft general comment (now para. 6) referred to the rights provided for in article 10, paragraph 1, of the Covenant, it should be brought into line with the language in that article by replacing the words "detained persons" by "all persons deprived of their liberty". That wording would also cover the treatment of the mentally ill, a question which had arisen in connection with the consideration of recent reports. The Committee also needed to decide whether supervision by independent persons and bodies referred only to penitentiary establishments or to all establishments in which people were deprived of their liberty.

65. Mr. ANDO said that, if the scope of the paragraph was to be extended in the way suggested by Miss Chanet, the meaning of the expression "independent persons and bodies" needed to be more clearly defined.

66. Mr. EL-SHAFEI agreed that a clearer definition was required and also felt that the words "in any case", at the beginning of the fourth sentence, should be deleted, since they weakened the force of the requirement.

67. Miss CHANET pointed out that the notion of supervision by independent persons and bodies had not been in the original text but had been the result of an amendment by Mr. Sadi. Perhaps he could help with the definition.

68. Mr. SADI said that he had simply wished to emphasize the principle involved and did not have any specific definition in mind.

69. Mr. HERNDL wondered whether the supervision of penitentiary establishments referred to the system as a whole or to individual establishments. In the latter case, independent bodies would need to be set up for the supervision of each establishment. Perhaps the provision was attempting to go too far and the paragraph should be deleted.

70. Mr. SADI said that the problem with State supervision of penitentiary establishments was that it offered no guarantee of protection of detainees' rights. In countries where a democratic system did not exist, additional independent supervision was required in order to protect those rights.

71. Mr. MÜLLERSON wondered whether independent bodies of the kind described actually existed in many countries. Was Mr. Sadi referring to non-governmental organizations (NGOs) concerned with human rights and humanitarian matters, and should States be required to encourage the functioning of such bodies? If a country did not have such bodies, did that mean that the Committee considered it to be in violation of article 10 of the Covenant? The Committee had to deal with all countries, both democratic and non-democratic, and he therefore felt that the paragraph in question should be amended or deleted.

72. Mr. SADI said that to delete the safeguard provided for in paragraph 8 would be a setback. Supervision did not have to be totally independent, but non-official, non-governmental supervision must be encouraged, otherwise the vested interests of the State might prevail and there would be no supervision at all.

73. Mr. MAVROMMATIS noted that in his country dual supervision was provided, on the one hand by judges responsible for visiting prisons and, on the other, by an independent body of experts appointed by the Government, including representatives of the bar association, doctors and social workers, who were responsible for ensuring that prison conditions met the necessary requirements. A reference to independent supervision was necessary. Supervision by NGOs would be unacceptable to most Governments.

74. Mr. WENNERGREN said that judges, ombudsmen, or committees of social workers or laymen could be cited as possible examples of independent persons and bodies. There were many different ways of exercising independent supervision.

75. Mr. HERNDL proposed that the third sentence should be amended to read: "The Committee believes that the supervision of penitentiary establishments should be entrusted to appropriate bodies, which should include independent experts."

76. The CHAIRMAN proposed that the third sentence should be deleted and the fourth sentence amended to read: "The reports should contain information about the system of supervision of penitentiary establishments and as to how impartial and independent supervision is ensured."

77. Mr. NDIAYE said that the fact that supervision was independent did not necessarily mean that it was more effective.

78. Mr. MAVROMMATIS felt that the concept of supervision had been misunderstood. It referred to a body of persons visiting prisons and making proposals concerning the improvement of all aspects of prison conditions. It did not imply intervention in the running of the prison. Outside supervision was essential to ensure that prisons discharged their functions in accordance with the Covenant.

79. Miss CHANET said that if the word "independent" posed a problem, perhaps it should be deleted and reference made only to "impartial" supervision.

80. Mr. SADI said that in many countries the judiciary was perceived as being impartial *ipso facto*, whereas in non-democratic countries that was not the case. The aim of independent supervision was to provide an additional safeguard. Perhaps the term "non-official" could be used as an alternative.

81. Mr. NDIAYE said that the idea of impartiality was much more important than that of independence. The main point was that effective control needed to be exercised by impartial authorities.

82. Mr. SADI said that he understood the problems raised by the use of the word "independent" and was therefore willing, reluctantly, to agree to its deletion. However, he would like to see the words "bona fide impartiality" used, since the impartiality must be genuine and not just theoretical.

83. The CHAIRMAN said that he would take it that the Committee agreed to the amendments he had proposed earlier, as subamended by Miss Chanet.

84. It was so decided.

85. Paragraph 8 (new para. 6), as amended, was adopted.

The meeting rose at 1 p.m.